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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' STATEMENT  
 REGARDING CASE MANAGEMENT  
 ISSUES**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

1 During the Case Management Conference (“CMC”) yesterday, the Court and the parties  
 2 discussed a number of related issues including the incomplete and non-compliant production of the  
 3 Administrative Record (“AR”), the possible production and *in camera* review of the Office of  
 4 Inspector General (“OIG”) Documents (“OIG Documents”) in the immediate term, and a possible  
 5 extension of the Temporary Restraining Order (“TRO”). Last night, the parties made several  
 6 filings on those same topics.

7 Solely for ease of reference, and for the Court’s consideration, Plaintiffs thought it might  
 8 be efficient to propose a consolidated way forward in advance of today’s hearing. Plaintiffs do not  
 9 presume to decide the appropriate course for the Court, but merely to provide some suggestions  
 10 that may be easier to digest in writing than during the hearing itself. Plaintiffs will also be  
 11 prepared to address the issues raised in the Court’s just filed Order re: Document Production. Dkt.  
 12 128.

13 For the limited purpose set forth above, Plaintiffs propose the following:

14 1. The Court orders production of the OIG Documents **today**. At the time of  
 15 production, Defendants shall file a declaration from a knowledgeable source attesting to the  
 16 following: (1) whether the production included materials from the Secretary and his subordinates,  
 17 in addition to the Census Bureau; (2) what time frame was searched for these documents; (3) what  
 18 custodians were searched; (4) whether the Department complied *fully* with the scope of the  
 19 production request; (5) the exact date on which the documents were produced to OIG; (6) whether  
 20 any portion of the production to OIG is still outstanding; and (7) how many documents were  
 21 produced. This attestation will help Plaintiffs understand the size and scope of the OIG  
 22 Documents vis-à-vis the complete administrative record.

23 2. As previously ordered by the Court, Plaintiffs will file their PI Reply brief on  
 24 September 15, 2020 (today). Dkt. 96 at 21. Plaintiffs are prepared to file the reply brief now, and  
 25 will do so during today’s hearing with the Court’s permission.

26 3. Defendants must ultimately produce the complete AR, and should continue efforts  
 27 to compile the AR expeditiously as the Court previously ordered. As stated in the September 12,  
 28 2020 Order to Produce the AR (Dkt. 96, at 22), the Court “will consult with the parties on a

1 schedule for production of the complete administrative record after the Court’s ruling on Plaintiffs’  
 2 motion for preliminary injunction.” If Defendants continue to compile the AR, and produce the  
 3 OIG Documents today, the Court will remove the September 16 deadline for production of the  
 4 Fontenot Documents from the calendar. If the OIG Documents production appears deficient or  
 5 incomplete based on the attestation required above, the Court will revisit the AR production  
 6 deadlines and Defendants’ violation of the Court’s Order to Produce the AR.

7 4. Upon production of the OIG Documents, the Court will “treat all such documents as  
 8 privileged and conduct in camera review.” Order Re: Production of Inspector General Document  
 9 Production (“OIG Order”) (Dkt. 119) at 3. “If the Court determines a document is not privileged,  
 10 Defendants shall have an opportunity to object to the Court’s determination,” but shall be required  
 11 to do so expeditiously. *Id.* Any documents that the Court determines are not privileged will be  
 12 produced to Plaintiffs if and when such objections are overruled.

13 5. Within two days after such production and review is complete, and the non-  
 14 privileged documents have been produced to Plaintiffs, the parties shall file simultaneous briefs of  
 15 not more than five pages addressing the OIG Documents portion of the AR.

16 6. Within two days following receipt of the supplemental briefs, the Court will hold a  
 17 hearing on Plaintiffs’ Motion for Preliminary Injunction (Dkt. 36). The Court will set the hearing  
 18 date and time as soon as the privilege review is complete, but anticipates holding it on Monday,  
 19 September 21. The Court will “issue a ruling very promptly” after the hearing. September 14,  
 20 2020 CMC Transcript at 62:19; Order re: Briefing and Deadline for Production (Dkt. 101) at 2.

21 7. To provide the Court sufficient time to review the OIG Documents *in camera*, for  
 22 Defendants to object to any production of non-privileged material, for the parties to file  
 23 supplemental briefs, for the Court to hold a hearing on the PI motion, and for the Court to issue a  
 24 ruling promptly thereafter, the Court will extend the TRO for “good cause” for one week, until  
 25 September 24, 2020.

1 Dated: September 15, 2020

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10 **ATTESTATION**

11 I, Melissa Arbus Sherry, am the ECF user whose user ID and password authorized the  
12 filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document  
13 have concurred in this filing.

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